UNITED
NATIONS

S

Security Council

Distr.
GENERAL

S/22393
22 March 1991

ORIGINAL: ENGLISH

LETTER DATED 13 MARCH 1991 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

You will recall that the Security Council declared itself in its resolution 635 (1989), which was adopted on 14 June 1989, deeply concerned by all acts of unlawful interference against international civil aviation. In paragraph 4 of that resolution, it urged "the International Civil Aviation Organization to intensify its work aimed at preventing all acts of terrorism against international civil aviation, in particular its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection". ICAO, following the destruction of Pan Am flight 103, had taken an initiative to this effect.

The ICAO Assembly unanimously adopted, in the fall of 1989, a decision which called upon the ICAO Council to convene a meeting of its Legal Committee to prepare a draft international instrument relating to the marking of explosives for detectability, with a view to its adoption at a diplomatic conference as soon as practical. Preceded by a special subcommittee, the Legal Committee of ICAO thereupon drew up a draft instrument at its twenty-seventh session held from 27 March to 12 April 1990.

In accordance with the decision taken by the ICAO Assembly, the instrument prepared by the Legal Committee was placed before a diplomatic conference that ICAO had convened at Montreal from 12 February to 1 March 1990. On its last day, the Conference adopted, by consensus and without a vote, the text of a new Convention on the Marking of Plastic Explosives for the Purpose of Detection and a resolution which forms part of the Final Act of the Conference. At the closing meeting of the Conference, the Convention was signed by the delegations of 40 States, and 76 delegations signed the Final Act.

In view of the keen interest expressed by the Security Council in the work of ICAO on the new instrument, the President of the ICAO Council and the Secretary-General of that Organization invited me to open the Conference on 12 February at Montreal. I did this with great satisfaction.

I would like to inform the Council, through you, of these developments and, in this regard, I attach the text of the Convention and of the Final Act.

(Signed) Javier PEREZ de CUELLAR

Annex I

[Original: Arabic, English, French, Russian and Spanish]

CONVENTION

on the Marking of Plastic Explosives for the Purpose of Detection

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that for the purpose of deterring such unlawful acts there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989, and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Convention:

1. "Explosives" mean explosive products, commonly known as "plastic explosives", including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.

2. "Detection agent" means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.

3. "Marking" means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.

4. "Manufacture" means any process, including reprocessing, that produces explosives.

5. "Duly authorized military devices" include, but are not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

6. "Producer State" means any State in whose territory explosives are manufactured.

Article II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

2. The preceding paragraph shall not apply in respect of movements for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

Article IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.

3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.

4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked

explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.

5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part I of the Technical Annex to this Convention so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.

6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II d) of Part I of the Technical Annex to this Convention and of unmarked explosives which no longer fall within the scope of any other sub-paragraphs of the said paragraph II.

Article V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as "the Commission") consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as "the Council") from among persons nominated by States Parties to this Convention.

2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.

3. Members of the Commission shall serve for a period of three years and shall be eligible for re-appointment.

4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.

5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.

2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.

3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

Article VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on or objects to the proposed amendment to consult the Commission.

2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph and report to the Council. The Council, after consideration of the Commission's report, and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.

3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.

4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.

5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.

6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

Article VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.

2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article X

The Technical Annex to this Convention shall form an integral part of this Convention.

Article XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article XII

Except as provided in Article XI no reservation may be made to this Convention.

Article XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.

2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depositary, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.

4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.

5. As soon as this Convention comes into force, it shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article XIV

The Depositary shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;

2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;

3. the date of entry into force of this Convention;

4. the date of entry into force of any amendment to this Convention or its Technical Annex;

5. any denunciation made under Article XV; and

6. any declaration made under paragraph 2 of Article XI.

Article XV

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

Annex II

[Original: Arabic, English, French, Russian and Spanish]

TECHNICAL ANNEX

PART 1: DESCRIPTION OF EXPLOSIVES

I. The explosives referred to in paragraph 1 of Article I of this Convention are those that:

a) are formulated with one or more high explosives which in their pure form have a vapour pressure less than 10^{-4} Pa at a temperature of 25°C;

b) are formulated with a binder material; and

c) are, as a mixture, malleable or flexible at normal room temperature.

II. The following explosives, even though meeting the description of explosives in paragraph I of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below or remain incorporated as there specified, namely those explosives that:

a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;

b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;

c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or

d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.

III. In this Part:

"duly authorized" in paragraph II a), b) and c) means permitted according to the laws and regulations of the State Party concerned; and

"high explosives" include but are not restricted to cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

PART 2: DETECTION AGENTS

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

Table

Name of detection agent	Molecular formula	Molecular weight	Minimum concentration
Ethylene glycol dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

Annex III

[Original: Arabic, English, French, Russian and Spanish]

FINAL ACT

of the International Conference on Air Law held under the auspices of the International Civil Aviation Organization in February-March 1991

The Plenipotentiaries at the International Conference on Air Law held under the auspices of the International Civil Aviation Organization met at Montreal from 12 February to 1 March 1991 for the purpose of considering a draft Convention on the Marking of Plastic Explosives for the Purpose of Detection prepared by the Legal Committee of the International Civil Aviation Organization.

The Governments of the following 79 States were represented at the Conference:

Afghanistan, the Republic of
Algeria, the People's Democratic Republic of
Argentine Republic, the
Australia
Austria, the Republic of
Belgium, the Kingdom of
Belize
Bolivia, the Republic of
Brazil, the Federative Republic of
Bulgaria, the People's Republic of
Byelorussian Soviet Socialist Republic, the
Canada
Cape Verde, the Republic of
Chile, the Republic of
China, the People's Republic of
Colombia, the Republic of
Costa Rica, the Republic of
Côte d'Ivoire, the Republic of
Cuba, the Republic of
Czech and Slovak Federal Republic, the
Denmark, the Kingdom of
Ecuador, the Republic of
Egypt, the Arab Republic of
Ethiopia, the People's Democratic Republic of
Finland, the Republic of
French Republic, the
Gabonese Republic, the
Germany, the Federal Republic of
Ghana, the Republic of
Guinea, the Republic of
Guinea-Bissau, the Republic of
Hellenic Republic, the
Holy See, the
Honduras, the Republic of
India, the Republic of
Indonesia, the Republic of

Iran, the Islamic Republic of
Israel, the State of
Italian Republic, the
Jamaica
Japan
Kenya, the Republic of
Kuwait, the State of
Lebanese Republic, the
Madagascar, the Democratic Republic of
Mali, the Republic of
Mauritius
Mexican States, the United
Morocco, the Kingdom of
Netherlands, the Kingdom of the
Nigeria, the Federal Republic of
Norway, the Kingdom of
Pakistan, the Islamic Republic of
Paraguay, the Republic of
Peru, the Republic of
Poland, the Republic of
Qatar, the State of
Republic of Korea, the
Romania
Saudi Arabia, the Kingdom of
Senegal, the Republic of
Spain, the Kingdom of
Sweden, the Kingdom of
Swiss Confederation, the
Thailand, the Kingdom of
Togolese Republic, the
Trinidad and Tobago, the Republic of
Tunisia, the Republic of
Turkey, the Republic of
Uganda, the Republic of
Ukrainian Soviet Socialist Republic, the
Union of Soviet Socialist Republics, the
United Arab Emirates, the
United Kingdom of Great Britain and Northern Ireland, the
United Republic of Tanzania, the
United States of America, the
Venezuela, the Republic of
Zaire, the Republic of
Zambia, the Republic of

The following International Organizations were represented by Observers:

United Nations (UN)
International Maritime Organization (IMO)
International Air Transport Association (IATA)
International Federation of Air Line Pilots' Associations (IFALPA)
African Civil Aviation Commission (AFCAC)
Latin American Civil Aviation Commission (LACAC)

The Conference was opened and addressed by the Secretary-General of the United Nations, Mr. Javier Pérez de Cuéllar, and the President of the Council of the International Civil Aviation Organization, Dr. Assad Kotaite.

The Conference unanimously elected as President Dr. K.O. Rattray (Jamaica). It further unanimously elected as Vice-Presidents Dr. F.A. Cede (Austria), Dr. H.A. Perucchi (Argentina), Mr. M. Mukai (Japan), and Mr. V. Poonoosamy (Mauritius).

The Secretary General of the Conference was Dr. S.S. Sidhu, Secretary General of the International Civil Aviation Organization. Dr. M. Milde, Director of the Legal Bureau of the International Civil Aviation Organization, was the Executive Secretary of the Conference; he was assisted by Dr. M. Pourcelet, Principal Legal Officer, Mr. R.D. van Dam, Senior Legal Officer, Mr. G.M. Kakkar and Mr. J.V. Augustin, Legal Officers of the Organization and by other officials of the Organization.

The Conference established a Commission of the Whole, whose Chairman was the President of the Conference, and the following Committees:

CREDENTIALS COMMITTEE

Chairman: Dr. I. Jakubovicz (Brazil)

Members: Czechoslovakia
Ghana
Lebanon
Sweden

DRAFTING COMMITTEE

Chairman: Mr. V. Poonoosamy (Mauritius)

Members: Argentina
Canada
China
Côte d'Ivoire
Czechoslovakia
Egypt
France
Islamic Republic of Iran
Japan
Pakistan
Saudi Arabia
Union of Soviet Socialist Republics
United Kingdom
United States
Venezuela

Following its deliberations, the Conference adopted by consensus the text of a Convention on the Marking of Plastic Explosives for the Purpose of Detection. The said Convention has been opened for signature at Montreal on this day.

The Conference furthermore adopted by consensus the following Resolution:

WHEREAS unlawful acts against, *inter alia*, civil aviation, maritime navigation and other modes of transportation often involve the use of explosives and explosive materials;

WHEREAS the marking of plastic explosives for the purpose of detection will assist States in preventing such acts;

NOTING the importance to all States of the availability of suitable means of detection;

RECOGNIZING that the implementation of such means could give rise to difficulties for some States;

CONSCIOUS of the desirability of further work in relation to the detection of explosives other than plastic explosives which might be used for unlawful acts;

NOTING the continuing interest of the United Nations and in particular of the International Civil Aviation Organization and the International Maritime Organization;

THE CONFERENCE:

1. Urges States to become Party to the Convention on the Marking of Plastic Explosives for the Purpose of Detection as soon as possible.

2. Calls upon States which manufacture plastic explosives to implement the marking of such explosives as soon as possible.

3. Requests States to continue to encourage research and development into improved and economic means of detecting all the marking agents specified in the Convention.

4. Urges the international community to consider increasing technical, financial and material assistance to States in need of such assistance in order to be able to benefit from the achievement of the aims and objectives of the Convention, in particular through the technical assistance programmes of the International Civil Aviation Organization.

5. Invites the Council of the International Civil Aviation Organization:

   a) to assume the functions referred to in the Convention;

   b) to maintain in existence its Ad Hoc Group of Specialists on the Detection of Explosives in order to enable it to continue studies to keep the Technical Annex to the Convention up to date, pending the entry into force of the Convention and the formation of the International Explosives Technical Commission;

   c) to respect the principle of equitable geographical representation in the appointment of the members of the International Explosives Technical Commission.

6. Requests the Council of the International Civil Aviation Organization to initiate, as a matter of high priority, studies into methods of detecting explosives or explosive materials, especially into the marking of those explosives of concern, other than plastic explosives, whose detection would be aided by the use of marking agents, with a view to the evolution, if needed, of an appropriate comprehensive legal regime.

IN WITNESS WHEREOF the Delegates of States duly authorized thereto have signed this Final Act.

DONE at Montreal on the first day of March of the year One Thousand Nine Hundred and Ninety-one in five authentic texts in the English, French, Russian, Spanish and Arabic languages in a single copy which shall be deposited with the International Civil Aviation Organization and a certified copy of which shall be delivered by the said Organization to each of the Governments represented at the Conference.

Annex IV

[Original: English]

Convention on the Marking of Plastic Explosives for the Purpose of Detection

Signed at Montreal on 1 March 1991*

States	Date of signature	Date of deposit of instrument of ratification, acceptance, approval or accession	Effective date
Afghanistan	1 March 1991		
Argentina	1 March 1991		
Belgium	1 March 1991		
Belize	1 March 1991		
Bolivia	1 March 1991		
Brazil a/	1 March 1991		
Byelorussian Soviet Socialist Republic	1 March 1991		
Canada	1 March 1991		
Chile	1 March 1991		
Costa Rica	1 March 1991		
Côte d'Ivoire	1 March 1991		
Czechoslovakia	1 March 1991		
Denmark	1 March 1991		
Ecuador	1 March 1991		
Egypt	1 March 1991		
France	1 March 1991		
Gabon	1 March 1991		
Germany	1 March 1991		
Ghana	1 March 1991		
Greece	1 March 1991		
Guinea	1 March 1991		
Guinea-Bissau	1 March 1991		
Israel	1 March 1991		
Italy	1 March 1991		
Kuwait	1 March 1991		

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* In accordance with article XIII, paragraph 3, the Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession, provided that no fewer than five such States have declared pursuant to paragraph 2 of that same article that they are producer States.

States	Date of signature	Date of deposit of instrument of ratification, acceptance, approval or accession	Effective date
Lebanon	1 March 1991		
Madagascar	1 March 1991		
Mali	1 March 1991		
Mauritius	1 March 1991		
Mexico	1 March 1991		
Norway	1 March 1991		
Pakistan	1 March 1991		
Peru a/	1 March 1991		
Republic of Korea	1 March 1991		
Senegal	1 March 1991		
Switzerland	1 March 1991		
Togo	1 March 1991		
Ukrainian Soviet Socialist Republic	1 March 1991		
Union of Soviet Socialist Republics	1 March 1991		
United Kingdom of Great Britain and Northern Ireland	1 March 1991		
United States of America	1 March 1991		

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a/ Reservation: Does not consider itself bound by article XI, paragraph 1, of the Convention.